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RECENT ENGLISH DECISION.

Court of Appeals.

WILSON v. GLOSSOP.

Where a husband connives at adultery on the part of his wife, but subsequently turns her out-of-doors for the offense, and she is without private means of support, he is liable for necessities furnished to her while apart from him.

ACTION brought in the Sheffield County Court to recover for necessities furnished to the defendant's wife under the circumstances mentioned in the head-note; the court gave judgment for the defendant, whereupon the plaintiff appealed to the Queen Bench Division. That court (MATTHEW and CAVE, JJ.), allowed the appeal and gave judgment for the plaintiff. The appeal was taken from the Divisional Court.

Moorsom, Q. C., for appellant.

Herbert Reed, contra.

LORD ESHER, M. R.—In this case, the plaintiff is to be taken to be in the position of a stranger, who has supplied things necessary for the maintenance of a married woman, living apart from her husband. There were proceedings in the Divorce Court, at this suit, for a dissolution of marriage on the ground of the wife's adultery, and the jury found that she had committed adultery, but that her husband had connived at it. On this state of facts the Divisional Court decided that he was bound to pay for the sustenance of his wife, and gave judgment for the plaintiff. The defendant has appealed.

When a man marries, he is bound to keep and maintain his wife, unless she has committed adultery, and further, he is bound in honor, to protect her from infamy. This man has done the reverse. The argument for him, to exonerate him from liability to maintain his wife, would, if it is sound, establish that if he had forced his wife to prostitution and lived on the proceeds of her shame, he might still, whenever he pleased so to do, turn her out-of-doors for that very adultery, and declare that he was no longer liable for her maintenance. Nothing could induce me to declare that such was the law, except a superior au-

thority which would bind me. I do not care to consider whether the wife can, under these circumstances, claim restitution of conjugal rights. That a husband, even after his wife has committed adultery, should turn her out without means of support, is harsh, but to say that a man who has been an accomplice can do so, is degrading. There is not, and there could not be a symptom of authority in support of such a proposition. The judgment of the court below was therefore right, and this appeal is dismissed.

FRY, L. J.—If a husband turns away his wife without means of support for any cause, not in law justifying such an action, she carries with her the right to pledge his credit for necessaries. The question then is, whether the adultery of the wife with the connivance of her husband, is such a justification. On this point, there is no direct authority. In my opinion, to say that such circumstances justify the husband in turning his wife out-of-doors, would be morally and socially wrong. The husband's act being thus without justification, she carries with her the right to pledge his credit for necessaries. That right she has exercised, and he is liable in this action.

LOPES, L. J.—The facts of this case are not in dispute and can be shortly stated. The wife of the defendant committed adultery with his connivance. The husband subsequently turned her out-of-doors. She had no means of support and she was supplied with necessaries for her maintenance by the plaintiff, who now seeks to make the defendant liable for the money so expended.

During cohabitation there is a presumption, though a rebuttable one, arising from the circumstances of cohabitation, that the wife is, in certain cases, the agent of her husband and entitled to pledge his credit. But when the wife is living apart from her husband at the time of making the contract, the presumption is the other way, and it lies on the creditor to show that the wife is living apart from her husband under such circumstances as give her an implied authority to bind him. If she is turned away by her husband without any justifiable cause and without the means of supplying herself with necessaries, the husband is

bound by any contract she makes for necessaries suitable to her degree and estate: per BAILEY, J., *Montague v. Benedict*, 3 B. & C. 635 (1825); 2 Sm. L. C. (9th ed.) 504. Again, in *Eastman v. Burchell*, 3 Q. B. D. 432 (1878), LUSH, J., says, "The authority of a wife to pledge the credit of her husband is a delegated, not an inherent authority. If she binds him, she binds him only as his agent. This is a well-established doctrine. If she leaves him without cause and without consent, she carries no implied authority with her to maintain herself at his expense. But if he wrongfully compels her to leave his home, he is bound to maintain her elsewhere."

Apply the law so laid down to the present case. A husband who has connived at the adultery of his wife, turns her out-of-doors without the means of providing herself with necessaries; does he not wrongfully compel his wife to leave his home? What right has he to complain of that to which he has been a willing party? And what justification is there for his turning his wife out-of-doors without the means of supplying herself with necessaries?

Harris v. Morris, 4 Esp. 41 (1801), relied on in the court below, seems to proceed on the ground that the husband's liability revives, if he takes the adulteress back into his house, and if he turns her out again, he does so with credit for necessaries. This case does not seem to assist in the decision of the one now before this court. Lord KENYON seems to found his judgment on the fact that she was *sponte retracta*.

Appeal dismissed.

We are not aware that this exact question has arisen in any American court, but the principles involved have frequently been under consideration.

In the first place if a wife commits adultery, without any connivance by her husband, it justifies him in sending her away, and then he is no longer liable for her support elsewhere; certainly not to one who knew he had discarded her for that cause: *Hunter v. Boucher*, 3 Pick. 289 (1825). In this case, it was said that the hus-

band was not liable even without notice, for the very fact of separation is enough to put persons upon their guard, and to require them to ascertain the cause of the separation, whether from cruelty of the husband or the crime of the wife; for in one case he is liable for her support, in the other not.

Whether adultery of the wife alone revokes her authority to buy necessaries for herself and family, if she continues to live with her husband, has not yet, so far as we know, been

judicially settled in America. Apparently it would not. The continued living with her by the husband might well be held a condonation and a continuation of her original right and authority, and doubtless our courts would follow the cases of *Norton v. Fazan*, 1 B. & P. 226 (1798), and *Harris v. Morris*, 4 Esp. 41 (1801), in this respect. And see *Henderson v. Stringer*, 2 Dana, 291 (1834).

Adultery alone, did not, as is well known, at the early common law, forfeit the wife's right of dower in her husband's estate: *Cogswell v. Tibbett's*, 3 N. H. 41 (1824); *Lakin v. Lakin*, 2 Allen, 45 (1861); *Bryan v. Batcheller*, 6 R. I. 543 (1860); *Littlefield v. Paul*, 69 Me. 527 (1879); *Smith v. Woodworth*, 4 Dillon, 584 (1877). It was not until the Statute of Westminster, II (13 Edw. I, c. 34), that any such effect was given to it, and that statute required that she should leave her husband, and "continue with the adulterer," in order to bar her dower. And if the husband afterwards "suffer her to dwell with him," her right of dower was restored. *A fortiori* it would seem therefore, that if a wife was allowed to live with her husband after her adultery, she could still pledge his credit, as before, for necessities. Besides, the Statute of Westminster required an elopement by the wife, as well as adultery, in order to bar her dower. For if he wrongfully deserted her, and she was afterwards guilty of adultery, she did not thereby forfeit her dower: *Graham v. Law*, 6 Up. Can. C. P. 310 (1857); approved in *Reel v. Elder*, 62 Penn. St. 317 (1869); *Heslop v. Heslop*, 82 Penn. St. 537 (1876).

As to the effect of the husband's connivance, the decision in the principal case seems right enough. That a husband cannot obtain a divorce for the wife's adultery, to which he con-

nived is familiar law: *Pierce v. Pierce*, 3 Pick. 299 (1825); *Cairns v. Cairns*, 109 Mass. 408 (1872); *Morrison v. Morrison*, 136 Mass. 310 (1884). The ground being, that he cannot take advantage of any wrong done him by his own consent or procurement. It would certainly seem, therefore, that he could not do so in a mere civil action for her necessary support, and we cannot doubt but that the principal case is correct and would be followed in America.

Ferren v. Moore, 59 N. H. 106 (1879), presents the remarkable case of a husband agreeing in writing that his wife might commit adultery, "upon condition that she should not look to him for support." Of course, it was held that adultery under such circumstances would not terminate his liability for her support, by one who was in no way connected with the illegal transaction.

And by "connivance or procurement" here is meant something more than a direct participation by the husband in his wife's crime. He may indirectly lead her to commit adultery, or at least be so far responsible for her fall, that he cannot afterwards deprive her of the rights in his estate she otherwise would have. Thus in *Cartwright v. Bate*, 1 Allen, 514 (1861), it was held that if a husband wrongfully expels his wife without cause, and afterwards intentionally misleads her to believe that he is dead, and she, acting honestly in that belief, marries another, whom she leaves at once upon hearing that her husband is alive, he cannot avail himself of the second marriage, and her conviction of bigamy, in defense to an action for necessities, subsequently furnished her; even though the plaintiff did not know all the circumstances when he furnished the support. This well may be supported on the ground of equit-

able estoppel. And see *Reel v. Elder*, 62 Penn. St. 317 (1869). But "connivance" generally requires some corrupt intent on the part of the husband that the wife shall commit the crime, and not merely making preparations to detect her in an anticipated or

suspected infidelity: *Robbins v. Robbins*, 140 Mass. 528 (1886), distinguishing *Morrison v. Morrison*, 136 Mass. 310 (1884), which is rather a close case upon the facts.

EDMUND H. BENNETT.

Boston.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

LYNN v. FREEMANSBURG BUILDING AND LOAN ASS'N.

Building associations incorporated under the Pennsylvania Act of 1859, and having no special power to impose fines, can do so only in the exercise of their general right to enact suitable by-laws for their government. The validity of such a by-law depends upon the reasonableness of the fines thereby imposed.

A by-law providing that every stockholder neglecting to pay his monthly dues and interest, "shall forfeit and pay the additional sum of ten cents monthly on each and every dollar due by him," is oppressive, extortionate, and unreasonable, and therefore invalid.

The sixth section of the Pennsylvania Act of April 10, 1879 (P. L. 17), providing that the fines or penalties imposed by building associations for non-payment of dues, interest, etc., "shall not exceed two per cent. per month on all arrearages," does not apply to associations incorporated prior to the passage of that act, who have not accepted the provisions thereof.

A stockholder in a building association gave it a mortgage to secure certain loans to him, for which his stock was also deposited as collateral. Being threatened with forfeiture of his stock under the by-laws, he subsequently paid the association a sum necessary to pay all his dues, interest, and fines; this money was applied in part to the payment of the fines claimed to be due under the by-laws. Subsequently the stockholder again became in default. The association forfeited his stock, and proceeded by *scire facias* on the mortgage. *Held*, that the stockholder was not estopped by his payment of the illegal fines from demanding that the sum paid by him, and applied to these fines, should be credited on the amount due on his mortgage.

ERROR to Court of Common Pleas of Northampton County.

Scire facias sur mortgage by the Freemansburg Building and Loan Association against Josephus Lynn.

By agreement of the parties, the case was heard without a jury by SCHUYLER, P. J., who found the following facts:

"The Freemansburg Building and Loan Association, plaintiff, was duly incorporated on November 20, 1872, under Act of